



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: pac@in.gov/opac  
Website: www.IN.gov/pac

## OPINION OF THE PUBLIC ACCESS COUNSELOR

**JUSTIN KIEL**

**Complainant**

**v.**

**TRI-TOWNSHIP  
CONSOLIDATED SCHOOL CORPORATION**

**Respondent**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**17-FC-12**

### ADVISORY OPINION

**March 14, 2017**

This advisory opinion is in response to a formal complaint alleging the Tri-Township Consolidated School Corporation ("School") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq., and the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. The School responded February 23, 2017 via Ms. Monica Conrad, Esq. The response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 23, 2017.

### DISCUSSION

There are a number of alleged violations; they will be addressed as they are presented in the formal complaint:



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: [pac@in.gov](mailto:pac@in.gov)/[opac@in.gov](mailto:opac@in.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

In November 2016, the School conducted a school climate assessment (hereinafter known as “survey”) soliciting input from students, faculty, administration, parents and community members. An outside consultant was hired to develop the survey. The survey had multiple choice answer options as well as open-ended questions. The School held an executive session on December 22, 2016 to discuss the job performance of an individual employee, however, it is alleged the survey results were discussed as well. The notice was subsequently amended to include the training of school board members with an outside consultant on their performance of their role as public officials. The School argues the survey was germane to the superintendent’s performance as many of the questions directly related to the overall satisfaction of his job performance.

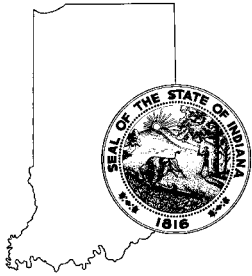
Indiana Code § 5-14-1.5-6.1(b)(9) & (11) states an executive session may be held to discuss job performance of an individual employee and train school board members with an outside consultant about the performance of the role of the members as public officials. A School Board has jurisdiction over a superintendent in a supervisory capacity. It appears as if the executive session was held to discuss his performance as well as consult with a third party as to the board’s role in overseeing his duties. It is my opinion the executive session was properly held.

After the executive session, a “work session” was held during which the consultant presented a presentation discussing general results of the survey. All of the results of the survey were not discussed. During this work session, the school board voted to reconvene the earlier executive session at the conclusion of the public work session.

Regarding meetings pursuant to Indiana Code § 5-14-1.5-5.5(a), the requirement of public notice does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof. The statute states executive sessions are not included reconvened meetings, thus the School violated the ODL by reconvening an executive session without proper notice. The School argues it is not required, however, a plain reading of the statute (and the Advisory Opinion from this Office) unequivocally prohibits an executive session from being reconvened. *Reconvening is only appropriate for open public meetings.*

Emphasis added.

The Complainant then made an Access to Public Records Act request for the full survey questions and results. They were denied as being deliberative. The School argues the disclosure of the full survey results would injure both the deliberative process and potentially compromise an individual student’s privacy. *Survey says...* this likely is not the case.



# STATE OF INDIANA

**ERIC J. HOLCOMB, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: [pac@in.gov](mailto:pac@in.gov)/[opac](mailto:opac@in.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

The deliberative material exception under the statute provides that “Records that are intra-agency or interagency advisory or deliberative material, including developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making” are excepted from disclosure at the discretion of a public agency. *Indiana Code § 5-14-3-4-(b)(6)*.

The School fails to present a valid argument as to how survey results solicited from extra-agency participants qualifies as “deliberative” under the statute. The survey was not limited to internal employees or administration. It was extended to students, parents and community members. These parties are not, by their nature, intra or inter agency personnel or contractors, even in the context of a school setting. Had the survey been strictly internal regarding the superintendent’s performance, it could qualify as a deliberative document or even perhaps a personnel file document. But by extending the invitation to participate by non-public employees and officials, the deliberative exception does not apply.

Additionally, this Office is well-versed in the nuances of the Family Educational Rights and Privacy Act (“FERPA”). The School argues the release of the survey results could compromise student identity and privacy. It is possible the open-ended questions could reveal the identity of a student, however, there is very little chance that the multiple-choice categorical ratings of an individual survey answer would point to a specific student or reveal a student’s identity. And even if some of the open-ended questions indicated student identities, the survey clearly is not a classroom activity immediately germane to the educational process and if it were, portions could be redacted and the rest released pursuant to Indiana Code § 5-14-3-6.

FERPA is not a catch-all disclosure exemption for any documentation with a nexus to a school activity. It is meant to protect an individual student’s educational privacy. Schools will often conduct surveys of a classroom evaluating instructor performance, the answers of which are exclusively given by students based upon a student’s experience with that particular course. This kind of audit would clearly be an educational activity. But a survey extended to students and several other categories of participants, outside of the classroom, about an administrator is mutually exclusive from a course instructor survey.

In my opinion, it would be a considerable stretch of existing statutory and case law to categorize a school climate survey (questions and answers) as either deliberative or an academic exercise when it is extended to students, parents, community members, teachers and administrators alike.

Furthermore, the Complainant submitted a public records request to the School seeking minutes, memoranda and the agenda from the December 22 2016 executive session and subsequent work session.



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: pac@in.gov/opac  
Website: www.IN.gov/pac

The December 22, 2016 work session minutes were not provided until January 16, 2017, and did not include which board members were present. Additionally, the Complainant discovered alleged defects from an October 17, 2016 meeting -namely the omission of an individual vote tally.

A slight delay during the holiday season to provide minutes is not a substantive violation of the ODL. There is a reasonable inference the School was not even open during that time to field APRA requests. There is no violation for failure to provide them sooner.

As for the October 17, 2016 meeting deficiencies, Indiana Code § 5-14-1.5-4(b) states the following memoranda shall be kept: the members of the governing body recorded as either present or absent; the general substance of all matters proposed; discussed or decided; a record of all votes taken by individual members if there is a roll call. There did not appear to be a roll call vote, so individual votes do not have to be tabulated and recorded, however, the School should be mindful the minutes should be an accurate reflection of what took place at the meeting. While it does not have to be a verbatim recitation of each detail, a reader not present at the meeting should have a reasonable idea of what took place during the meeting.

Finally, the Complainant alleges discussions of public business not held during the meeting, however, there is no indication from the information provided the School board met as a majority or in a serial meeting scenario. Be mindful with regard to the utilization of "work sessions", as stated in the Opinion of the Public Access Counselor 14-FC-88 -*These types of informal "work sessions" are not in compliance with access laws unless the public is able to observe and record and notice is given regardless if final action is taken. While the lack of notice may seem inconsequential as long as the meeting is held conspicuously, it is of utmost importance the interested public is notified of the exact date and time when a majority of a governing body is taking official action on public business.*

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the climate survey questions and results should be released. However, there is no indication of any other violation other than the reconvening of an executive session without proper notice.



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

---

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: [pac@in.gov](mailto:pac@in.gov)/[opac](mailto:opac@in.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt  
Public Access Counselor

Distribution: Ms. Monica Conrad, Esq.